BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements	)	WC Docket No. 02-112
	)	
	)	
2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules	)	CC Docket No. 00-175

COMMENTS OF SAGE TELECOM, INC.

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SUMMARY

The Commission is fully empowered under the Communications Act to retain the statutory safeguards of section 272 indefinitely. The BOCs continue to command substantial market power over local services, the BOCs' use of product bundles has been plagued with abuse through the trying of local service to other services, and significant potential for on-going competitive harm remains. For these and other reasons, the Commission should continue to impose section 272 requirements on the BOCs, at least until their local service domination has ended and their bundling of local service with other services are proven to no longer pose any competitive threat. Any costs incurred in the retention of section 272 safeguards are inconsequential to the ultimate cost to consumers of a market in which the only survivors are the dominant BOCs.

In considering whether to lift the protections afforded by section 272 of the Communications Act, the Commission should engage in a comprehensive analysis of the BOCs' competitive record. The Commission should consider removing the requirements of section 272 only when it has been fully determined that competitive conditions are such that the protections afforded by section 272 are no longer necessary.

If the Commission should conclude that the requirements of section 272 are no longer necessary, the Commission nevertheless should classify the BOCs as dominant in the provision of services bundled with local and in-region, interexchange telecommunications services. For the purpose of determining market dominance, the Commission should use bundled telecommunications services offerings as the relevant market since neither cable telephony, wireless service, nor Internet-based applications are fully substitutable with bundled wireline services at this time. Because the BOCs continue to have market dominance in the

provision of wireline telephone exchange and exchange access services, and they continue to use that leverage to the detriment of their competitors, the full panoply of dominant carrier regulations should be applied to them.

If the Commission should determine that dominant carrier regulation is not appropriate, it should impose more stringent transparency requirements on the BOCs to ensure that potential anticompetitive conduct is deterred or eliminated. Additionally, to ensure further compliance, the Commission should adopt performance metrics, patterned after the Texas standards, and an enforceable penalty mechanism, such as that proposed by Sage.

INDEX OF EXHIBITS

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COMMENTS OF SAGE TELECOM, INC.

SAGE TELECOM, INC. ("Sage Telecom"), by its undersigned counsel, hereby respectfully submits its comments in response to the Commission's Further Notice of Proposed Rulemaking[1] in the above-captioned proceeding. Sage Telecom submits that, in light of the Bell Operating Companies' ("BOCs") persistent, pernicious anticompetitive and discriminatory practices, combined with their unabated anticompetitive leveraging of their dominance in the telephone exchange and exchange access service markets, the Commission should continue to subject the Bell Operating Companies ("BOCs") to the transactional, reporting, and structural

1 *In the Matter of Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements, 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules*, WC Docket No. 02-112, CC Docket No. 00-175, Further Notice of Proposed Rulemaking (rel. May 19, 2003) (*FNPRM*).

requirements of section 272[2] of the Communications Act of 1934, as amended (the "Communications Act"). In the absence of section 272 safeguards, the Commission should classify the BOCs as dominant in the provision of services bundled with local and in-region, interstate interexchange telecommunications services, subject to the panoply of Title II dominant carrier regulations and other pro-competitive requirements.

I. BACKGROUND AND INTRODUCTION

A. ABOUT SAGE TELECOM, INC. AND ITS INTEREST IN THIS PROCEEDING

Sage Telecom is a competitive local exchange carrier dedicated to serving residential and business customers primarily in rural and suburban areas with a full range of local and long distance services. Sage Telecom offers a variety of calling plans, including its Home Choice Plan for residential customers, which includes unlimited local calling, long distance, and vertical features, such as Caller ID, Call Waiting and Call Forwarding. Founded in 1996 by people with years of experience in the telecommunications industry, Sage Telecom has become one of the fastest growing residential competitive local exchange carriers. It currently serves nearly 500,000 residential and small business customers in nine states—including Arkansas, California, Indiana, Kansas, Michigan, Missouri, Oklahoma, Texas, and Wisconsin—and is continuing to expand.

As a provider of bundled telecommunications services, Sage directly competes with the BOCs in jurisdictions in which Sage is authorized to operate as a competitive local exchange carrier. Likewise, as a UNE-P provider in these markets, it purchases essential telecommunications input from the BOCs. Because of Sage's dual status as a direct BOC

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2 47 U.S.C. § 272.

competitor and wholesale customer, Sage Telecom has a significant interest in the outcome of this proceeding. As more fully explained below, the Commission's ultimate determination in this proceeding could profoundly affect Sage Telecom's ability to compete profitably with the BOCs.

B. SUMMARY OF THIS PROCEEDING

In this proceeding, the Commission seeks comment on the appropriate classification of the BOCs' provision of in-region , interstate and international interexchange telecommunications services. The Commission also seeks comment on how changes to the competitive landscape within the interexchange market should affect this classification, as well as on what regulatory approach is appropriate for BOCs, if and when these carriers may provide in-region, interexchange services outside of a separate affiliate. Specifically, the Commission seeks comment on the continued need for dominant carrier regulation of BOCs' in-region, interstate and international interexchange telecommunications services after sunset of the Commission's section 272 structural and related requirements.[3] The Commission also asks whether there are alternative regulatory approaches, in lieu of dominant carrier regulation, that the Commission could adopt to detect or deter any potential BOC anticompetitive behavior.[4]

In assessing market power and determining whether non-dominant regulation is appropriate for the BOCs, the Commission seeks comment on how best to delineate the relevant service and geographic markets in which market power may be exercised by the incumbents.[5] To identify whether the BOCs may be able to raise prices by restricting their own output, the

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3 *FNPRM* at 1-2.

4 *FNPRM* at 2.

5 *FNPRM* at 6.

Commission seeks comment specifically on what factors it should consider in evaluating the market power of the BOCs in the provision of interexchange telecommunications services.[6] Likewise, in trying to determine whether the BOCs have the power to unilaterally raise prices by increasing their rivals' costs or by restricting their rivals' output through their control of an essential input, the Commission seeks comment on the extent to which the BOCs could leverage market power from their local exchange and exchange access markets into the markets for interstate and international interexchange telecommunications services.[7] More particularly, the Commission seeks comment on the incentives and abilities of these carriers to misallocate their costs, discriminate, and engage in predatory price squeezes to such an extent that they may increase their market share and attain market power in the interstate and international interexchange markets.[8]

The Commission also asks whether, and to what extent, dominant carrier regulation of interstate and international interexchange services is suited to achieving the Commission's objectives to promote competition and to deter anticompetitive behavior by the BOCs following a section 272 sunset.[9] Finally, the Commission invites interested parties to address whether there are adequate safeguards in place, post-section 272 sunset, that would prevent anticompetitive conduct by the BOCs, including cost misallocation, unlawful discrimination, or a price squeeze.[10]

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6 *FNPRM* at 16.

7 *FNPRM* at 16.

8 *FNPRM* at 17.

9 *FNPRM* at 20.

10 *FNPRM* at 21.

C. SUMMARY OF SAGE'S POSITION

Sage submits that the Commission should continue to impose the requirements of section 272 until it has been credibly demonstrated that competition in the local exchange and exchange access market has reached a point where the BOCs no longer can leverage their significant monopoly power, and that the BOCs propensity to engage in discriminatory and anticompetitive conduct has significantly diminished. In making this determination, the Commission should look at whether the relevant local exchange telephone market continues to be irreversibly opened to competition. The Commission also must look at the BOCs' behavior vis-à-vis their competitors and apply a competitive analysis similar to that utilized by the Commission in section 271 proceedings. At this time, Sage believes that none of the BOCs can legitimately pass this threshold test.

Once the BOCs legitimately pass this threshold test—and the Commission can genuinely conclude that the local exchange and exchange access market is sufficiently competitive to warrant a grant of section 272 relief—the Commission should make a market dominance determination focused on the provision of services bundled with local and in-region, interexchange services. In this regard, at this time, the BOCs continue to exert dominance in the provision of local exchange and exchange access service, which they can (and do) leverage to anticompetitive effects in the provision of bundled services. Consequently, even if the Commission concludes that the safeguards afforded by section 272 are no longer necessary with respect to particular BOCs, the Commission should classify the BOCs as dominant in the provision of services bundled with local and in-region, interstate interexchange services.

Should the Commission ultimately conclude that dominant regulation is not appropriate—despite strong evidence to the contrary—the Commission should impose stringent

transparency requirements upon the BOCs as preventive measures designed to detect, expose, and ultimately deter illicit conduct—and to thereby permanently preserve the benefits of competition for consumers. In addition, to ensure compliance with these preventive measures and other statutory obligations, the Commission should adopt effective performance metrics and establish an enforceable penalty mechanism, such as that proposed by Sage in its comments.

II. FOR THE PURPOSE OF DETERMINING MARKET DOMINANCE, THE COMMISSION SHOULD CONSIDER BUNDLED SERVICE OFFERINGS THAT INCLUDE IN-REGION, INTEREXCHANGE TELECOMMUNICATIONS SERVICE TO BE A DISTINCT SERVICE MARKET.

A. THE COMMISSION SHOULD CONSIDER BOC BUNDLED SERVICE OFFERINGS IN WHICH INTEREXCHANGE SERVICE IS PACKAGED WITH LOCAL SERVICE TO BE THEIR OWN UNIQUE MARKET.

In the *FNPRM*, the Commission seeks comment on whether bundled offerings that include local and interstate interexchange services constitute a separate relevant service market for the purpose of determining market dominance.[11] Sage submits that the relevant service market for the purpose of market dominance analysis appropriately should be those services bundled with local exchange and in-region, interLATA interexchange services.

The BOCs have already commenced marketing bundled service offerings that include combinations of various services. These bundled services typically tie local services to intrastate interexchange and interstate interexchange telecommunications services, and various vertical features, offered at a single monthly rate; other pre-packaged combinations add Internet access or wireless service.

Verizon, for example, offers a package of services called "Verizon Freedom," which ties its local services to its regional/local toll calling, long distance, wireless, and on-line

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11 *FNPRM* at 9.

Internet access service.[12] Likewise, SBC, under its "SBC Connections," offers several pre-packaged services combining a complete plan of phone services, including local, long distance, vertical services, and Internet service.[13] BellSouth markets "BellSouth Answers," which combines unlimited local calling, long distance, Internet service, and wireless service.[14] Finally, Qwest has its "Preferred Choice," which combines local telephone service, vertical features, wireless service, long distance, and Internet access.[15]

Over the last year, the BOCs have introduced these bundled packages principally in response to highly innovative service plans offered by Sage and other UNE-P carriers. As the BOCs' promotional materials indicate, these telecommunications packages consistently tie local service to other BOC services, and are consistently offered by the BOCs at substantial discounts, purportedly to make them competitive with the services provided by competing carriers, including Sage, but frequently for the unstated purpose of leveraging the BOCs' continued market dominance over local services. For example, BellSouth offers up to $100 cash back in connection with its "BellSouth Answers" packages.[16] Likewise, Verizon, Qwest, and SBC tout significant consumer discounts, including cash backs, for bundled local, long distance, wireless, and Internet access services.

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12 *See* <http://www22.verizon.com/foryourhome/sas/res_cat_VZpackages.asp> (visited June 21, 2003).

13 *See* <http://www01.sbc.com/products_services/residential/catalog/1,,1--6-3-1,00.html> (visited June 21, 2003).

14 *See* <http://www.bellsouth.com/consumer/answers/index/html?EC&res_dd=answers> (visited June 21, 2003).

15 *See* <http://www.qwest.com/pcat/for_home/product/1,1354,974_1_6,00.html> (visited June 21, 2003).

16 *See* n. 4 *supra*.

The BOCs' ability or willingness to offer deep discounts for bundled services in order to discourage competitive alternatives is, of course, not a matter of considerable debate. There can also be no argument that the BOCs' control of essential bottleneck facilities and their ability to leverage their market dominance in local exchange and exchange access—two major components of their bundled services—put them in a category all their own. Indeed, the Commission has, on several occasions, acknowledged that control of the loops imbues the BOCs with monopoly power in the local exchange and exchange access markets. In the *Non-Accounting Safeguards NPRM*, for example, the Commission noted that a BOC's control of bottleneck facilities could enable it to allocate costs improperly from its affiliate's interLATA services to the BOC's unregulated exchange or exchange access services, discriminate against its affiliate's interLATA competitors, and potentially engage in a price squeeze against those competitors.[17] The Commission also noted that a BOC potentially could use its market power in the provision of local exchange and exchange access services to discriminate against its interLATA affiliate's competitors to gain an advantage for its interLATA affiliate.[18]

Because the BOCs retain the incentive and the ability to leverage their monopoly control of bottleneck facilities and their dominance in the local exchange and exchange access markets to disadvantage their competitors in the provision of bundled telecommunications packages, the Commission should establish that bundled offerings that include local and in-

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17 *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended; Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LECs' Local Exchange Area*, CC Docket No. 96-146, Notice of Proposed Rulemaking, FCC 96-308 (rel. July 18, 1996), ¶¶ 135-41 (*Non-Accounting Safeguards NPRM*).

18 *Id.* at ¶ 139.

region, interstate interexchange services constitute a separate relevant service market for the purpose of determining BOC market dominance.

B. IN DETERMINING THE RELEVANT SERVICE MARKET, THE COMMISSION SHOULD EXCLUDE TELECOMMUNICATIONS SERVICES PROVIDED OVER OTHER PLATFORMS.

The Commission seeks comment on whether telecommunications services offered by cable and wireless providers should be included in the relevant service market for the purpose of this proceeding.[19] More specifically, the Commission inquires whether bundled service package offerings offered by wireless and cable telephone providers can be viewed as sufficiently substitutable by a sufficiently large percentage of customers to constrain the exercise of market power by the BOCs and independent LECs.[20]

As the Commission correctly observes in the *FNPRM*, there has been an increase in offerings of bundled telecommunications services by other carriers, including major interexchange carriers, cable telephony providers, and BOCs/independent LECs in recent years. However, as explained below, although competition from wireless carriers and cable service providers providing bundled services is increasing, their mass market substitutability with wireline bundled offerings is highly questionable at this time.

1. Wireless Local And Long Distance Service Is Not Yet Fully Comparable To, Or Fully Substitutable With, Wireline Bundled Service Offerings.

Wireless local and long distance service is not yet fully comparable to, or fully substitutable with, wireline bundled service offerings. First, prices for wireless services compared with bundled wireline telecommunications services remain relatively high. For many

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19 *FNPRM* at 8.

20 *FNPRM* at 15.

subscribers, price is a major issue in determining potential alternatives to wireline services. Second, for users to switch from wireline services to wireless services, certain shortcomings must be overcome, one of which is voice quality. Another consideration for many subscribers is reliability. Although the quality and reliability of wireless service are continuing to improve, the fact remains that most consumers still prefer to have wireline telephone service. Indeed, as the Commission has acknowledged in one of its reports, recent data show that only 3% or 5% of wireless customers use their wireless phones as their only phone, indicating that relatively few wireless customers have "cut the cord" in the sense of canceling their subscription to wireline services.[21]

Wireless service is also not yet fully substitutable to wireline telephone service because wireless providers continue to be saddled with regulatory uncertainties in the areas of universal service eligibility, intercarrier compensation, and interconnection.[22] As long as these regulatory uncertainties and other factors cited above exist, wireline substitutability will continue to elude wireless services.

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21 *Implementation of Section 6002(b) of the Omnibus Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Seventh Report (rel. July 3, 2002).

22 In a recent *ex parte* FCC filing, Verizon argued that it is not obligated under the Communications Act to provide transit service to requesting carriers. The issue is critical to wireless providers because wireless providers utilize the BOCs' transit service to originate calls to, and terminate calls from, third-party carriers with whom they do not have direct interconnection arrangements.

2. Cable Telephony Is Not Yet Fully Comparable To, Or Fully Substitutable With, Wireline Bundled Service Offerings. Even Where It Is Comparable, Cable Telephony Should Only Be Considered Substitutable Only In The Narrow Geographic Markets Where Cable Providers Have Deployed Telephony-Capable Networks.

Cable telephony has not yet reached the level of ubiquity and technical reliability necessary to be considered a reasonable substitute for wireline telephone services. As of the end of 2002, major cable providers served less than 2.5 million residential subscribers of cable telephony across the country.[23] In fact, competitive residential cable telephony is only available in approximately 30 cities and 15 states.[24] Moreover, the business market continues to be underserved by cable providers. The reasons for this low market penetration level are numerous, as discussed below.

Most industry players are wary of the capital costs and wide-ranging operational hurdles associated with their future telephony business strategies. Even with costs trending down for equipment, software and truck rolls, launching a telephony business over cable can cost almost $1,000 per subscriber, leaving a reasonable return on investment years away.[25] Indeed, the cost of upgrading a cable system to provide cable telephony is not insignificant. To illustrate, Cox, which has installed 11 switches in its largest markets, estimates its switching costs at $105 per customer. In addition, Cox spends an additional $505 per customer for various equipment and interfaces. This combined variable cost of $610 per customer for the provision of local telephony is in addition to the $220 per home passed that Cox must invest to upgrade its cable plant to 750MHz capacity and to introduce two-way interactivity. It also does not include the

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23 *See* http://www.ncta.com/broadband/broadband.cfm?broadID=3 (visited June 23, 2003).

24 *Id.*

25 *Cable Telephony—Moving Slowly but Surely*, CED Magazine (Jan. 2002).

$100 per customer that Cox is investing to power its cable networks to ensure that telephone service continues in the event of a power failure.[26]

Cable providers also point to operational challenges such as operational support system and billing system integration, lingering regulatory issues and technical concerns such as providing emergency 911 and lifeline services.[27] Back-office functions and processes necessary to effectively deliver service on a large scale—including call processing, emergency 911 services, billing, data sharing, phone number administration, local number portability, operator services, directory assistance, directory listings, interconnection agreements with other phone companies, calling cards, and numerous other operational requirements—remain a major stumbling block.[28]

In addition, cable providers claim that BOCs have frustrated facilities-based competition. They have attempted to impose onerous interconnection terms and conditions, delayed connecting facilities, processing orders, and porting numbers, and generally placed barriers in the way of competitors.[29] As a result of BOC intransigence, it has been reported that cable telephony providers have had to submit virtually all of their interconnection agreements to state public service commissions for arbitration. In short, cable companies have been forced to deal with a variety of anticompetitive tactics undertaken by the BOCs.[30]

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26 *Cable Telephony: Offering Consumers Competitive Choice*, NCTA White Paper, at 4 (rel. July 2001) (*NCTA White Paper*).

27 *Cable Starts Dialing for Dollars with VoIP*, CED Magazine (May 2002).

28 *Whitepaper: Preparing for the Promise of Voice-over Internet Protocol (VoIP)*, Cox Communications White Paper, at 3 (Feb. 2003).(*Cox Whitepaper*).

29 *NCTA White Paper*, at 4.

30 *NCTA White Paper*, at 9.

Finally, while many cable providers are now focusing on VoIP as an alternative to circuit-switched telephone service provided over cable, there is wide consensus in the cable industry that significant questions of scalability and powering will need to be resolved before VoIP can be marketed by cable providers on a mass scale.[31] Recently, Cox has indicated that VoIP is not yet viable for widespread deployment of residential, primary line, lifeline phone service, [32] and that it will not launch VoIP service until the technology is ready for widespread deployment.[33]

The technical, cost, regulatory, and operational problems cited above have combined to prevent telephony services offered over cable from competing against the bundled offerings provided by the incumbent LECs in the mass market. Moreover, even where cable providers are able to provide substitutable telephone service over cable, the geographic markets in which they are offered are severely limited, the networks are not ubiquitous, and business customers remain underserved. Consequently, cable telephony cannot reasonably be found to be a ubiquitous substitute for wireline services and the Commission should disregard the BOCs' arguments to the contrary. To the extent that cable telephony is considered by the Commission to be a reasonable substitute for wireline services, it should only be considered a substitute in the narrow geographic markets where telephone-capable cable networks are deployed—and even then, only for the primary types of customers served by such networks.

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31 *NCTA White Paper*, at 7.

32 *Cox White Paper*, at i.

33 *Cox White Paper*, at ii.

C. INTERNET-BASED BUNDLED SERVICES SHOULD NOT BE INCLUDED IN THE DEFINITION OF THE RELEVANT SERVICE MARKET.

Internet-based applications also should not be included in the definition of the relevant service market. As discussed above, technical and operational issues prevent the full substitutability of Internet-based services, such as VoIP, with bundled wireline services at this time. To be sure, 911 issues and the lack of soft switches capable of handling enterprise-level volumes continue to pose problems for Internet-based services. Indeed, it is widely accepted in the industry that deployment and interoperability problems with Internet-based network infrastructure continue to persist, severely impacting the introduction of new services and technology. In addition, Internet-based services have inherent inefficiencies associated with switched technology which are just now being addressed.

Similarly, regulatory uncertainty makes effective business planning for mass markets impossible. In particular, since the beginning of 2003, states have increased their focus on VoIP technologies and some states have in fact commenced proceedings. For example, the Virginia State Corporation Commission has taken notice of Vonage, a VoIP provider, and is considering subjecting it to its jurisdiction. On April 17, 2003, the Public Utilities Commission of Ohio initiated an inquiry concerning how telecommunications providers are using VoIP to provide telecommunications services to Ohio consumers. Meanwhile, the Florida Public Service Commission[34] is waiting on the FCC's resolution of the pending AT&T[35] and Pulver.com petitions dealing with VoIP regulatory issues.[36]

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34 *In Re Commission Workshop Regarding Voice Over Internet Protocol* (undocketed).

35 *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services Are Exempt from Access Charges*, WC Docket No. 02-361.

36 *Regulatory Battle Moving to the US States*, pulver.com reports (May 8, 2003).

In light of these reliability, service quality, and other technical issues, combined with the regulatory uncertainties facing Internet-based service providers, and the facts that many consumers cannot afford Internet access and that Internet access is often delivered by the BOCs' network, Internet-based services have not reached a point where they can be credibly considered as fully substitutable with wireline telephone service.

D. THE COMMISSION SHOULD DEFINE THE RELEVANT GEOGRAPHIC MARKET NARROWLY.

As explained above, effective intermodal competition in bundled offerings appropriately should be restricted to narrowly defined markets in which cable companies have overbuilt the public switched telephone network. The Commission, in fact, has adopted a similar granular analysis in the Triennial Review proceeding. More particularly, the Commission has set out specific criteria that must be applied to determine, on a granular basis, whether economic and operational impairment exists in a particular market.[37] An analysis of BOC dominance in particular markets that focuses on geographic granularity is thus grounded on FCC precedence.

III. THE BOCS HAVE DEMONSTRATED THE ABILITY AND INCENTIVE TO LEVERAGE THEIR MARKET POWER OVER LOCAL SERVICES TO ANTICOMPETITIVE EFFECT IN THE PROVISION OF BUNDLED SERVICE OFFERINGS.

The Commission previously has found that a carrier can unilaterally raise and sustain prices above competitive levels and thereby exercise market power in two ways. First, a carrier may be able to raise prices by restricting its own output. Second, a carrier may be able to unilaterally raise prices by increasing its rivals' costs or by restricting its rivals' output through

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37 *See Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 01-338, CC Docket No. 96-98, CC Docket No. 98-147.

the carrier's control of an essential input, such as access to bottleneck facilities, which its rivals need to offer their services.[38] The Commission also has similarly found that a BOC potentially could use its market power in the provision of local exchange and exchange access services to discriminate against its interLATA affiliates' interLATA competitors to gain an advantage for its interLATA affiliate.[39] The Commission has concluded that there are various ways in which a BOC could attempt to discriminate against unaffiliated interLATA carriers, such as through poorer quality interconnection arrangements or unnecessary delays in satisfying its competitors' requests to interconnect to the BOC's network. To the extent customers value "one-stop shopping," degrading a rival's interexchange service may also undermine the attractiveness of the rival's interexchange/local exchange package and thereby strengthen the BOC's dominant position in the provision of local exchange services.[40]

As explained below, the BOCs have engaged and continue to engage in anticompetitive and discriminatory practices designed to leverage their market power in the local exchange and exchange access market in order to quash competition, while at the same time increasing their market penetration in the interexchange market. Because the BOCs have remained dominant in the telephone exchange and exchange access market, and they have used that dominance as a leverage to compete unfairly against other carriers in the provision of bundled telecommunications services, the Commission should classify the BOCs as dominant in the bundled services market.

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38 *Non-Accounting Safeguards NPRM* at ¶ 132.

39 *Non-Accounting Safeguards NPRM* at ¶ 139.

40 *Id.*

A. THE BOCs HAVE CREATED ANTICOMPETITIVE PRICE SQUEEZES DESIGNED TO LEVERAGE THEIR DOMINANCE IN THE LOCAL EXCHANGE AND EXCHANGE ACCESS MARKETS TO INCREASE THEIR MARKET POWER IN THE PROVISION OF BUNDLED AND INTEREXCHANGE SERVICES.

The BOCs have not been shy about their attempts to increase the costs of their rivals' products by increasing the costs of their rivals' essential inputs. The recent Illinois legislation is a case in point. With lobbying help from its pricey, high-profile political hires and swarms of "payroll" lobbyists, SBC got a bill introduced, passed and signed into law in four days.[41] The Bill, SB 885, commanded the adoption of significantly higher rates for SBC's unbundled network elements, bypassing both the federal pricing formula and the Illinois Commerce Commission (the "Illinois Commission") which, by law, was to use that formula in setting rates applicable to competitors. In effect, SB 885 would have allowed SBC to charge its competitors an average of $22 per month—up from the current average of $12.

Indeed, SB 885 would have authorized SBC to increase its current two wire loop rate in downtown Chicago from $2.59 to $5.12--$2.53 more than the current Illinois loop rate[42] A similar two-wire loop in Chicago metro would have been increased from its current rate of $7.07 to $12.83[43]--$5.76 more expensive than the current wholesale loop rate, and $1.23 more than SBC's retail rate of $11.60.[44] Finally, SBC would have been permitted to increase its rate

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41 *See, e.g., SBC to Charge Illinois Phone Rivals More Money*, XCHANGE (May 9, 2003).

42 *See* Ameritech Tariff Ill. C.C. No. 20, 1st Revised Sheet No. 31 & 5th Revised Sheet No. 31 (showing SBC's revised loop rates that would have been applicable had the U.S. District Court not ruled against SB 885).

43 *See id.*

44 For the purpose of comparison, Sage utilized the retail rate data provided by the Illinois Commission's Telecommunications Division's staff in its "Telecommunications Division Staff Report," TRM 1454, dated December 30, 2002. The retail rate quoted applies under most, but not all, circumstances.

for a two-wire loop in suburban/downstate Chicago from $11.40 to $19.29[45]—$7.89 more expensive than the current Illinois loop rate, and $4.22 more expensive than SBC's retail rate of $15.07.[46] Indeed, SBC's initial proposal was to increase the rates for two-wire loops in downtown Chicago, Chicago metro, and suburban/downstate Chicago to $5.96, $14.81, and $22.02, respectively.[47] Several pages of SBC's Illinois tariff showing its current and revised loops rates are attached hereto collectively as *Exhibit A*.

With UNE loop rates set significantly higher than SBC's retail rates, competition would be a thing of the past in Illinois. This is the definition of an anticompetitive price squeeze, under which a competing carrier would have to charge its customers at least the cost of the loop—which happens to be significantly higher than SBC's retail rate in this case—in order to come close to a break-even point.

Indeed, subsequent to the passage of SB 885, several carriers publicly questioned their ability to sustain operations in Illinois in light of the significant increase in the SBC UNE rates. Sage, which was in arbitration against SBC before the Illinois Commission at the time SB 855 was passed, ultimately had to withdraw its petition for arbitration, citing the anticompetitive impact of the law on its operations in Illinois.[48]

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45 *See* Ameritech Tariff Ill. C.C. No. 20, 1st Revised Sheet No. 31 & 5th Revised Sheet No. 31.

46 *See* n. 44 *supra*.

47 *See Illinois Bell Telephone Company Petition to Determine Adjustments to UNE Loop Rates Pursuant to Section 13-408 of the Illinois Public Utilities Act*, Docket No. 03-0323, Order (June 9, 2003) (adopting new loop rates pursuant to SB 855).

48 *See Petition for Arbitration of an Interconnection Agreement with Illinois Bell Telephone Company d/b/a SBC Illinois Under Section 252(b) of the Telecommunications Act of 1996*, ICC Docket No. 03-0314, Sage Telecom, Inc.'s Notice of Withdrawal of Petition for Arbitration (filed May 19, 2003).

Although the law was subsequently temporarily blocked from taking effect by Chief Judge Charles P. Kocoras of the U.S. District Court of the Northern District of Illinois,[49] the Illinois legislation underscores the fact that BOCs will remain steadfast in their resolve to decimate competition at all cost, including engaging in blatant attempts to increase their rivals' costs.[50]

Regardless of the ultimate outcome of SB 855, SBC's anticompetitive legislative attempt in Illinois promises to be just the beginning. Indeed, on June 27, 2003, SBC filed an appeal with the United States Court of Appeals for the Seventh Circuit seeking to overturn Judge Kocoras' preliminary injunction order.[51] Moreover, SBC's president, William Daley, reportedly has said that SBC is considering pursuing a similar strategy of trying to convince legislators in its territory that SBC must be allowed to increase its rates so it can remain competitive and preserve jobs.[52]

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49 *Voices for Choices, et al. v. Illinois Bell Telephone Company, et al.*, Docket No. 03 3290, Memorandum Opinion and Order (N.D. Ill., June 9, 2003), *see also SBC's New UNE Rates Blocked by Federal District Court*, TR's State NewsWire (June 10, 2003).

50 On June 25, 2003, the Lieutenant Governor of Illinois filed a petition with the Illinois Commission requesting, among other things, that the Illinois Commission refrain from any rulemaking implementing recent changes brought about by SB 855, and that the Illinois Commission not contest any efforts by the competitive local exchange carriers ("CLECs") to make Judge Kocoras' preliminary injunction permanent. The Commission has not acted on the Lieutenant Governor's petition at this time. *See Petition of Lieutenant Governor Pat Quinn to Edward C. Hurly, Chairman of the Illinois Commerce Commission, Pursuant to Section 5-145(b) of the Illinois Administrative Procedure Act*, Petition to the Illinois Commerce Commission to Comply with Judge Kocoros' Ruling, Docket No. 03-0414 (filed June 25, 2003).

51 *See SBC Appeals Illinois Injunction*, TelephonyOnline.com (June 27, 2003).

52 *See William Daley Feeling Heat in New Home, Job*, Chicago Tribune Online Edition (June 15, 2003).

Recent attempts by other BOCs to increase their rates in other states, such as Ohio, Indiana, Michigan, and California,[53] evince the same anticompetitive strategy to raise the costs of their rivals in order to discourage competition. Massachusetts, until recently, had UNE rates that made competing against Verizon's services uneconomic, thanks in large measure to Verizon. Under those rates, the amount of money that a competitor would have had to pay to lease UNE-P from Verizon for each customer exceeded the retail price at which Verizon offered retail service to the same customer.[54]

As a further example of BOC attempts to increase the costs of critical inputs, the BOCs recently had sought to include last-minute legislative amendments to the FCC Reauthorization Act that would have required the Commission to reexamine the total element long run incremental cost ("TELRIC") pricing standard. More specifically, the provision would have mandated that the Commission undertake a study within 180 days of the effectiveness of the TELRIC pricing methodology.[55] Although the BOCs' efforts proved ultimately futile, due in large measure to Sen. Ernest Hollings' insistence that the proposed provision be withdrawn in

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53 *See, e.g., Indiana Senate Drops Broadband Bill, Adopts Resolution*, XCHANGE (June 20, 2003).

54 *See Petition of AT&T Communications of New England, Inc. Requesting the Department to Review and Reduce Existing Recurring Charges for Unbundled Network Elements* (filed March 13, 2000).

55 *See TELRIC was Part of FCC Reauthorization, Could Reemerge as Senate Marks Up Bill*, TR Daily (June 18, 2003).

order for him to cosponsor the legislation with Sen. John McCain, it nevertheless demonstrates that the BOCs will continue to find ways to make competitive entry uneconomic for many carriers.[56]

B. THE BOCs HAVE ENGAGED IN UNREASONABLY DISCRIMINATORY PRACTICES, LEVERAGING THEIR DOMINANCE IN THE LOCAL EXCHANGE AND EXCHANGE ACCESS MARKETS FOR THE PURPOSE OF INCREASING THEIR MARKET POWER IN THE PROVISION OF BUNDLED AND INTEREXCHANGE SERVICES.

The BOCs' have an inexhaustible cache of strategic, anticompetitive initiatives designed to leverage their market power in the telephone exchange and exchange access market. As illustrated below, the BOCs continue to engage in unreasonably discriminatory practices to the detriment of their competitors.

In Maryland, Verizon has refused to make its voicemail products nondiscriminatorily available to competing carriers for resale in order to protect its dominant position in the Maryland telecommunications market.[57] Specifically, Verizon has refused to sell its Home Voice Mail product to CloseCall's local service customers on a stand-alone basis (*i.e.*, independently of Verizon's local telephone service) or allow CloseCall to resell Verizon's voicemail products—the result is an unlawful tying arrangement in which a customer's ability to subscribe to Verizon's voicemail products is directly tied to his or her subscription to Verizon's local services.

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56 It has been reported this week that Sen. Sam Brownback was considering introducing an amendment that would instruct the Commission to review its use of the TELRIC pricing standard. Other sources indicate, however, that the TELRIC amendment likely will not be offered. *See Brownback Considering TELRIC Amendment to FCC Reauthorization Bill Before Senate*, TR Daily (June 25, 2003).

57 *See In the Matter of the Complaint of CloseCall America, Inc. v. Verizon Maryland, Inc.*, Case No. 8927, Public Version of Direct Testimony of Robert W. McCausland (filed Jan. 31, 2003).

Although Verizon does not allow CloseCall to resell its voicemail products, it nevertheless will permit selected carriers (*e.g.,* Lightyear) to resell Verizon-branded voicemail services and provide to these carriers additional resale discounts far greater than those approved by the Maryland Public Service Commission (the "Maryland Commission") for resale in return for assisting Verizon in its effort to win back customers from other CLECs. It appears that Verizon creates these arrangements through the use of separate but "inter-operational" agreements between Verizon and selected resellers. It also appears that the Maryland Commission-approved interconnection agreements between Verizon and the selected CLEC (*i.e.,* a "bounty-hunter CLEC partner") interlock with one or more "secret" agreements which are not filed by Verizon with the Maryland Commission nor made publicly available via the Internet or other mechanisms. In this manner, it appears that Verizon makes special, secret and potentially illegal arrangements with certain CLECs when doing so fits Verizon's long-term competitive goals.

By tying access to its voicemail products with access to the local loop, Verizon effectively discourages subscribers from switching to other competitive carriers. Moreover, by restricting access to voicemail, Verizon can easily win back former subscribers who may have switched to other carriers. As of the time that CloseCall filed its complaint with the Maryland Commission, this anticompetitive strategy had caused approximately 1,300 of CloseCall's customers to cancel their orders. In addition, because certain agreements that permit Verizon to engage in this abominable behavior are not publicly available, it is difficult to assess whether there are other unlawful arrangements in which Verizon is involved and, if so, the magnitude and extent of competitive harm that has resulted from such private arrangements. What is clear,

however, is that Verizon has, to a large extent, succeeded in discouraging competition by leveraging its control of essential facilities and services in Maryland.

Verizon engages in additional anticompetitive practices in Maryland. In particular, Verizon requires that its DSL service customers must also subscribe to its local telephone services.[58] Specifically, Verizon will not provide its DSL services (provided by Verizon's Internet affiliate) to CloseCalls's local telephone customers, nor will it permit its DSL service customers to switch to CloseCall's telephone services. (Verizon refuses to convert its local service to that of CloseCall when the end user is purchasing Verizon DSL services, even though Verizon's local service is provided via tariff provisions devoid of any references to extensive minimum periods or DSL products of Verizon or its affiliates.). By tying together its local telephone services and its affiliate's DSL services, Verizon is able to successfully block subscribers from switching to other competitive providers. Verizon continues to engage in this practice even though the Maryland Commission, in Case 8921, had directed Verizon to permit customers subscribing to Verizon's DSL service to select the local telephone service provider of their choice. As a result of these practices, CloseCall has lost thousands of customers and close to $2 million in potential revenue.

As if this is not enough, Verizon also has stopped customers who obtain line sharing DSL services from independent ISPs (such as EarthLink, Inc. and AOL Time Warner, Inc.) and digital/data local exchange carriers (such as Covad Communications, Inc.) from subscribing to CloseCall's local telephone service. Specifically, Verizon's agreements with companies like Earthlink, AOL, and Covad prohibit those companies from providing broadband

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58 *See In the Matter of the Complaint of CloseCall America, Inc. v. Verizon Maryland, Inc.*, Case No. 8927, Supplemental Testimony of Thomas E. Mazerski (filed Jan. 31, 2003).

service on lines that CloseCall uses to provide local telephone service. As a result, when a CloseCall customer seeks Earthlink, AOL, or Covad broadband access, these companies instruct the customer that they must first cancel their CloseCall local service subscription and switch to Verizon's local telephone service.

Because Verizon is the only provider of wholesale linesharing DSL in Maryland and the rest of its service territory, Verizon is able to leverage its market power to CloseCall's detriment. By tying line sharing DSL and local telephone service, Verizon effectively discourages customers from subscribing to CloseCall's local telephone service.

Attached collectively as *Exhibit B* are public copies of testimony filed by Robert W. McCausland and Thomas E. Mazerski in the Maryland proceeding.

Verizon is not the only incumbent LEC that has engaged, and continues to engage, in anticompetitive and discriminatory practices in order to discourage competition from other carriers. Last year, the Minnesota Department of Commerce alleged that Qwest cut secret, sweetheart deals with some competitors to the detriment of others. For example, Qwest granted some competitors discounts on fees for access to its phone lines if those competitors agreed not to oppose Qwest's bid to sell long-distance in Minnesota. Other competitors were not informed of those discounts and therefore could not request those terms in their own agreements with Qwest. The Minnesota Public Utilities Commission (the "Minnesota Commission") found the secret agreements to be violations of state and federal law. In February 2003, the Minnesota

Commission ordered Qwest to offer all competitors a combination of rebates and discounts as "restitutional remedies," or Qwest could pay a $26 million fine.[59]

These examples of anticompetitive and discriminatory conduct are just few of the many instances of unlawful behavior in which BOCs have engaged and continue to engage. Such conduct clearly demonstrates the extent of BOCs' dominance and how they can, and do, use that dominance to gain advantage over their competitors in the provision of bundled service offerings.

C. THE BOCS APPEAR TO HAVE ENGAGED IN UNLAWFUL CROSS-SUBSIDIZATION TO INCREASE THEIR MARKET POWER IN THE PROVISION OF BUNDLED AND INTEREXCHANGE SERVICES.

A survey of BOC bundled packages reveals that the BOCs offer heavily discounted bundled services. For example, SBC's "ALL DISTANCE Connections" combines unlimited local calling, vertical services, and unlimited nationwide long distance calling for $48.95 a month.[60] Verizon, on the other hand, offers unlimited direct-dialed long distance calling, unlimited direct-dialed local and regional calling, and unlimited use of voice mail and other vertical features, for $49.95 per month under its "Verizon Freedom" plan.[61] A cursory review of these pricing options suggests that the BOCs are practically giving away key components of their bundled offerings.

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59 *See In the Matter of the Complaint of the Minnesota Department of Commerce Against Qwest Corporation Regarding Unfiled Agreements*, Docket No. P-421/C-02-197, Order After Reconsideration on Own Motion (issued April 30, 2003).

60 *See*<http://www02.sbc.com/products_services/residential/prodinfo_1/1,,1123--1-3-1,00.html> (visited June 23, 2003).

61 *See* http://www22.verizon.com/foryourhome/sas/freedomlongdesc.asp? (visited June 23, 2003).

D. THE BOCs CONTINUE TO ENGAGE IN OTHER ANTICOMPETITIVE PRACTICES DESIGNED TO LEVERAGE THEIR MARKET POWER IN THE LOCAL EXCHANGE AND EXCHANGE ACCESS MARKETS.

There are other instances of anticompetitive practices in which the BOCs have engaged. In Texas, for example, SBC originates significant collect calls from payphones in prisons which are then terminated to Sage's customers. SBC has traditionally insisted that Sage pay SBC 100% of the amounts that SBC charges for the collect calls, even though Sage is unable to collect from its customers in certain cases. Sage challenged SBC before the Texas Public Utilities Commission (the "Texas PUC") and the arbitrator properly concluded that SBC had the financial responsibility for such calls because Sage was simply SBC's billing agent. Despite Sage's successful Texas challenge, the issue remains a significant problem in other states.

This situation is noteworthy because it underscores SBC's ability to impose additional costs on its competitors, making it potentially uneconomic to compete against SBC. By leveraging its position as the monopoly provider of telephone exchange and exchange access services in its territory—and knowing full well that Sage has no choice but to interconnect with and purchase critical inputs from it—SBC has created a situation where Sage is forced to either agree to pay SBC an amount to which it is not entitled, or expend significant financial resources to litigate. Either way, SBC is successfully able to saddle Sage with unnecessary costs.

The BOCs' winback promotional activities also demonstrate how the BOCs are able to use their dominance in the telephone exchange and exchange access service markets to win back subscribers that have switched to competing carriers. By waiving *local* installation or reconnection charges and offering significant rate reductions, among other things, the BOCs are able to lure customers back to their bundled service offerings.

A more recent problem concerns three-way calls between SBC, Sage, and potential Sage customers. In order to remove a local PIC freeze from a customer's account, Sage convenes a three-way call with SBC and the customer. The process is problematic because the SBC center only operates from 8 AM to 5 PM Central, which means that Sage often times is unable to initiate three-way verification calls when the customers are in different time zones or when the customer calls Sage at times outside of the SBC center's hours of operation. By making it difficult for potential customers to switch to Sage, SBC is able to keep the customer, delay the conversion to Sage service, and impose additional costs on Sage. Again, by leveraging its dominance in the local exchange market, SBC is able to negatively impact Sage's ability to compete, while also inconveniencing customers that desire to switch to Sage service.

IV. THE COMMISSION SHOULD CONTINUE TO APPLY THE REQUIREMENTS OF SECTION 272 TO THE BOCS.

A. SECTION 272(F) OF THE COMMUNICATIONS ACT AUTHORIZES THE COMMISSION TO EXTEND THE THREE-YEAR SUNSET PERIOD, AND THE COMMISSION SHOULD CONTINUE TO APPLY THE REQUIREMENTS OF SECTION 272 UNTIL IT IS DEMONSTRATED THAT COMPETITIVE CONDITIONS NO LONGER REQUIRE THE APPLICATION OF THE SECTION 272 REQUIREMENTS.

The Commission should continue to apply the full panoply of safeguards available under section 272 to the BOCs until it has been demonstrated that competitive conditions are such that section 272 safeguards are no longer necessary. The Commission is fully empowered to do so by legislative fiat. Section 272(f)(1) of the Communications Act states, in relevant part:

> (1) Manufacturing and Long Distance.—The provisions of this section (other than subsection (e)) shall cease to apply with respect to the manufacturing activities or the interLATA telecommunications services of a Bell operating company 3 years after the date such Bell operating company or any Bell operating company affiliate is authorized to provide interLATA

> telecommunications services under section 271(d), *unless the Commission extends such 3-year period by rule or order.*[62]

The protections afforded by section 272 help to ensure that the BOCs are discouraged from engaging in anticompetitive and discriminatory practices from the outset. For instance, Section 272(b) includes a number of structural safeguards that constrain a BOC's ability to allocate costs improperly. This provision requires a BOC interLATA affiliate to "operate independently" from the BOC, maintain separate books, records, and accounts from the BOC, and have separate officers, directors, and employees. Section 272 also requires each BOC to obtain and pay for a joint Federal/State audit every two years conducted by an independent auditor to determine whether the BOC has complied with the requirements of section 272.

The structural separation and audit requirements mandated in section 272 help reduce the risk of improper allocation of costs by minimizing the amount of joint costs that could be improperly allocated. In the *Non-Accounting Safeguards Order*,[63] the Commission adopted rules to implement and clarify these provisions. For example, the Commission concluded that the requirement that the BOC and its affiliate operate independently precludes the joint ownership of transmission and switching facilities by a BOC and its interLATA affiliate, as well as the joint ownership of the land and buildings where those facilities are located. The Commission also concluded that operational independence precludes a section 272 affiliate from performing operating, installation, and maintenance functions associated with the BOC's affiliate. Likewise, it bars a BOC or any BOC affiliate, other than the section 272 affiliate itself,

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62 47 U.S.C. § 272(f)(1) (emphasis added).

63 *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking (rel. Dec. 24, 1996) (*Non-Accounting Safeguards Order*).

from performing, operating, installation, or maintenance functions associated with the facilities that the section 272 affiliate owns or leases from a provider other than the BOC with which its is affiliated. The Commission found that the separate employee requirement would ensure that the costs of each employee would be attributed to the appropriate entity.

Section 272 also requires a BOC interLATA affiliate to conduct all transactions with the BOC on an arm's length basis, and all such transactions must be reduced to writing and made available for public inspection. In the *Accounting Safeguards Order*,[64] the Commission concluded that, to satisfy this requirement, a section 272 affiliate must, at a minimum, provide a detailed written description of the asset or service transferred and the terms and conditions of the transaction on the Internet within 10 days of the transaction through the company's Internet home page. The Commission concluded that these safeguards will constrain a BOC's ability to allocate costs improperly and make it easier to detect any improper allocation of costs that may occur.

Section 272 contains additional nondiscrimination safeguards that, combined with section 272 transactional, reporting, and structural separation requirements, afford competing carriers a measure of protection from potential BOC anticompetitive conduct. The Commission should continue to impose these requirements until it has been fully demonstrated that competing carriers are no longer subject to BOC abuses.

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64 *Implementation of the Telecommunications Act of 1996, Accounting Safeguards Under the Telecommunications Act of 1996*, CC Docket No. 96-150, Report and Order (*Accounting Safeguards Order*).

B. THE COMMISSION SHOULD LOOK AT THE COMPETITIVE RECORD OF THE BOCS BEFORE EXEMPTING THE BOCS FROM THE REQUIREMENTS OF SECTION 272

Sage submits that the Commission should continue to impose the requirements of section 272 until it has been credibly demonstrated that competition in the local exchange and exchange access market has reached a level where the BOCs no longer can leverage their significant monopoly power, and that the BOCs propensity to engage in discriminatory and anticompetitive conduct has significantly diminished.

In making this determination, the Commission should look at whether the relevant local exchange telephone market continues to be irreversibly opened to competition. The Commission also must look at the BOCs' behavior vis-à-vis their competitors. Sage suggests that the Commission utilize the same analysis relied upon by the Commission in determining the BOCs' eligibility to provide in-region, interLATA services pursuant to section 271 of the Communications Act. For instance, the Commission might seek to determine whether the local exchange market continues to be irreversible opened to competition. Likewise, the Commission might look into the timely provisioning of interconnection, unbundled network elements, collocation, and resale services by the relevant BOCs. Further, the Commission might inquire whether the relevant BOCs have discriminated against other competing carriers.

By engaging in this competitive analysis, the Commission would be able to determine, among other things, whether there has been any recidivism post-271 approval; whether the BOCs have fully complied with the requirements of section 272 and other applicable statutory requirements and Commission orders; and whether the BOCs' overall conduct warrant their exemption from the structural, transactional, operational, and nondiscrimination safeguards of section 272.

C. THE BOC'S PRESENT AND UNABATED ANTICOMPETITIVE BEHAVIOR MANDATES THE CONTINUED APPLICATION OF SECTION 272 SAFEGUARDS.

As more fully discussed above, the BOCs have demonstrated their ability to engage in anticompetitive price-squeezes, unlawful discrimination, and cross-subsidization, leveraging their dominance in the local exchange and exchange access services to gain competitive advantage over their competitors in the provision of bundled telecommunications services.

For example, CloseCall's complaint against Verizon in Maryland shows that Verizon has leveraged its dominance in the local exchange market to deny CloseCall and other competitors the benefit of competition in the provision of voicemail and DSL services. Similarly, Qwest's secret agreements in Minnesota prove beyond any doubt that Qwest will not hesitate to engage in illicit conduct designed to "punish" its competitors while "rewarding" those with whom it has preferential arrangements. Likewise, Sage's unpalatable experience with SBC with respect to in-collect calls shows that SBC can, and does, increase the costs of competitive carriers in an effort to inhibit their growth and to drive them out of the telecommunications market.

The BOCs' unabated anticompetitive behavior demands that the Commission continue to impose the structural, transaction, nondiscrimination, and audit/reporting requirements of section 272 until such time as the BOCs no longer have the ability to leverage their market dominance. Given the present state of competition in the provision of bundled telecommunications packages, it would be premature to exempt the BOCs from these requirements at this time.

D. IF THE COMMISSION BELIEVES, NOTWITHSTANDING CREDIBLE EVIDENCE TO THE CONTRARY, THAT THE SECTION 272 SAFEGUARDS ARE NO LONGER WARRANTED, THE COMMISSION SHOULD CLASSIFY THE BOCS AS DOMINANT IN THE PROVISION OF BUNDLED TELECOMMUNICATIONS SERVICES.

If the Commission should decide that the requirements of section 272 are no longer necessary, the Commission should classify the BOCs as dominant in the provision of services bundled with local and in-region, interexchange telecommunications services. For this purpose, the analysis should focus on the bundled services market, as more fully discussed in Section II of these comments.

In the *LEC Classification Order*,[65] the Commission classified the BOC interLATA affiliates as nondominant in the provision of in-region, interexchange services. This classification, however, was predicated upon the existence of section 272 requirements:

> We conclude that the requirements established by, and the rules implemented pursuant to, sections 271 and 272, together with our existing rules, sufficiently limit a BOC's ability to use its market power in the local exchange or exchange access markets to enable its interLATA affiliate profitably to raise and sustain prices of in-region, interstate, domestic, interLATA services significantly above competitive levels by restricting the affiliate's own output. We therefore classify the BOCs' section 272 interLATA affiliates as non-dominant in the provision of these services."[66]
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> The nondiscrimination and structural separation requirements set forth in section 272 and our rules thereunder, price cap regulation of the BOC's exchange access services, and the Commission's

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65 *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area, Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-149, CC Docket No. 96-61, Second Report and Order and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61 (rel. April 18, 1997) (*LEC Classification Order*).

66 *LEC Classification* Order, at ¶ 82.

affiliate transaction rules sufficiently reduce the risk of successful anticompetitive discrimination and improper allocation of costs.[67]

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We conclude that applicable statutory and regulatory safeguards are likely to be sufficient to prevent the BOCs from improperly allocating costs between their monopoly local exchange and exchange access services and their affiliates' competitive interLATA services to such an extent that their interLATA affiliates would be able to eliminate other interLATA service providers and subsequently earn supra-competitive profits by charging monopoly prices. Section 272(b) includes a number of structural safeguards that constrain a BOC's ability to allocate costs improperly.[68]

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The structural separation and audit requirements mandated by section 272 should reduce the risk of improper allocation of costs by minimizing the amount of joint costs that could be improperly allocated.[69]

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We also find that the structural separation requirements of section 272(b) will constrain a BOC's ability to discriminate against its affiliate's interLATA competitors.[70]

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In addition, we believe that, if the predatory behavior described above were to occur, it could be adequately addressed through our complaint process and enforcement of antitrust laws, coupled with the biennial audits required by section 272(d), such that the benefits of any protections offered by advance tariffing and cost support data requirements would be outweighed by the enormous administrative burden those requirements would impose on the Commission."[71]

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67 *LEC Classification* Order, at ¶ 91

68 *LEC Classification* Order, at ¶ 104.

69 *LEC Classification* Order, at ¶ 104.

70 *LEC Classification* Order, at ¶ 116.

71 *LEC Classification* Order, at ¶ 128.

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> We therefore see no reason to impose dominant carrier regulation on the BOC interLATA affiliates, given that section 272 contains numerous safeguards designed to prevent the BOCs from engaging in improper cost allocation, discrimination, and other anticompetitive conduct. We emphasize that our decision to accord non-dominant treatment to the BOC's provision of in-region, interLATA services is predicated upon their full compliance with the structural, transactional, and nondiscrimination requirements of section 272 and our implementing rules."[72]

In light of these extensive Commission findings, the BOCs should be classified as dominant, because failure to do so would allow the BOC to use their market power in the local exchange or exchange access markets, and enable them profitably to raise and sustain prices of their in-region, interstate, domestic, interLATA services significantly above competitive levels by restricting their own output. Similarly, the lack of section 272 safeguards would increase the risk of successful anticompetitive discrimination and improper allocation of costs, therefore necessitating the classification of the BOCs as dominant. Moreover, in the absence of section 272 structural separation requirements, the risk of improper allocation of costs would increase and nothing would constrain a BOC's ability to discriminate against its competitors—again making a clear case for BOC dominant classification.

The imposition of dominant regulation on BOCs in the provision of bundled telecommunications services also is appropriate for the simple reason that it makes everything transparent, allowing the Commission to spot anticompetitive practices. Under current rules, non-dominant carriers are not subject to rate regulation, and nondominant interexchange carriers

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72 *LEC Classification* Order, at ¶ 134.

are prohibited from filing interexchange tariffs. Non-dominant carries are also subject to streamlined section 214 requirements.[73] In contrast, dominant interexchange carriers are subject to price cap regulation, when specified by Commission order, and must file tariffs on 14, 45, or 120 days' notice, with cost support data for above-cap and out of-band tariff filings.[74] Dominant domestic carriers must also obtain specific prior Commission approval to construct a new line or to acquire, lease or operate any line, as well as to discontinue, reduce, or impair service.[75] As discussed elsewhere in this comments, the BOCs continued leveraging of their market dominance in the telephone exchange and exchange access markets, combined with their unabated anticompetitive and discriminatory activities, mandates the imposition of dominant carrier regulation as a preventive measure to deter further illicit conduct.

The Commission previously has recognized the potential benefits of applying dominant carrier regulation to the BOCs' provision of in-region, interexchange telecommunications services:

> We recognize that certain aspects of dominant carrier regulation might constrain a BOC's ability to raise the costs of its affiliate's interLATA rivals or engage in other anticompetitive conduct. For example, requiring a BOC interLATA affiliate to file its tariffs with advance notice and cost support data might help to detect and prevent predatory pricing, particularly if coupled with a price floor on the affiliate's interLATA services. Price cap regulation of a BOC interLATA affiliate's interLATA services may deter a BOC from raising the costs of its affiliate's rivals through discrimination or other anticompetitive conduct by limiting the profit the affiliate could earn as a result of the anticompetitive conduct.[76]

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73 *See* 47 C F R §§ 63.71, 63.07(a)

74 *See* 47 C F R §§ 61.41, 61.58(c)

75 47 C.F.R. §§ 63.01 *et seq.*

76 *LEC Classification* Order, at ¶ 87.

Because it has been proven, time and again, that the BOCs will stop at nothing to discourage competition, and because it is manifest that the BOCs have the means and the gumption to leverage their dominance in the local exchange and exchange access markets to the detriment of their competitors, the Commission should subject the BOCs to dominant carrier regulation in the absence of section 272 safeguards. Anything short of dominant carrier regulation would reduce the incentives for competing carriers to compete against the BOCs' bundled offerings, as well as constrain the development of competition in the relevant markets.

V. AS AN ALTERNATIVE TO DOMINANT CARRIER REGULATION, THE COMMISSION SHOULD REQUIRE FULL DISCLOSURE OF BOC INTERCARRIER AGREEMENTS, INTRA-COMPANY TRANSFERS, AND COMPLAINTS.

A. TO COMBAT POTENTIAL ANTICOMPETITIVE DISCRIMINATION, THE COMMISSION SHOULD REQUIRE THE BOCS TO FILE WITH THE COMMISSION, OR TO MAKE PUBLICLY AVAILABLE VIA THE INTERNET, CERTAIN AGREEMENTS BETWEEN THE BOCS AND OTHER CARRIERS, INCLUDING BOC-AFFILIATED ENTITIES.

In the absence of section 272 safeguards and dominant carrier regulation, the Commission should impose transparency requirements on the BOCs. Specifically, the Commission should require the BOCs to file with the Commission, or to make publicly available and accessible via the Internet, all agreements between the BOCs and other carriers, including any and all BOC-affiliated entities, having to do with:

- Interconnection for the provision of interexchange services offered as part of a bundled service offering.
- Resale of interexchange services offered as part of a bundled service offering.
- Interconnection for and resale of data services—such as DSL—that are offered as part of a bundled service offering.

- Resale of unregulated service elements—such as voicemail and billing services—that are provided in conjunction with regulated services as part of a bundled service offering.

In addition, the Commission should monitor intra-company transfers to ensure that competitive service elements offered as part of a bundled offering are not subsidized by monopoly service elements.

By imposing these disclosure requirements on the BOCs, the Commission would ensure that illicit BOC activities are discouraged. Indeed, the Commission already has acknowledged that

> there are various ways in which a BOC could attempt to discriminate against unaffiliated interLATA carriers, such as through poorer, quality interconnection arrangements or unnecessary delays in satisfying its competitors request to connect to the BOC's network. Certain forms of discrimination may be difficult to *police*, particularly in situations where the level of the BOC's "cooperation" with unaffiliated interLATA carriers is difficult to quantify.[77]

CloseCall's experience in Maryland relating to Verizon's "stealth" arrangements, and the competitive carriers' experience in Minnesota concerning Qwest's secret preferential agreements, clearly demonstrate the BOCs' propensity to "hide the ball" and underscore the difficulty of "policing" BOC discriminatory conduct. Sage submits that the only way to expose such discriminatory conduct and deter it is to put the BOCs under a magnifying glass.

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77 *LEC Classification* Order, at ¶ 111 (emphasis added).

B. THE COMMISSION SHOULD REQUIRE THE BOCS TO FILE WITH THE COMMISSION, OR MAKE PUBLICLY AVAILABLE VIA THE INTERNET, ALL COMPLAINTS FROM COMPETING CARRIERS AND SUBSCRIBERS REGARDING THE BOCS' PROVISIONING OF BUNDLED SERVICE OFFERINGS THAT INCLUDE INTEREXCHANGE SERVICES.

Consistent with the transparency requirements discussed above, Sage submits that the Commission should require the BOCs to file with the Commission, or make publicly available and accessible via the Internet, all complaints from competing carriers and subscribers regarding the BOCs' provisioning of bundled service offerings that include interexchange services. Such reporting would allow competitors, regulators, and telephone subscribers to detect discriminatory or otherwise anticompetitive conduct, and would aid enforcement efforts by the Commission and state regulators. In addition, the Commission should make more aggressive use of its Audits and Investigations Branch in response to supported allegations of anticompetitive conduct by the BOCs.

Because discriminatory conduct seriously undermines competition, the Commission should ensure that complaints grounded in BOC anticompetitive conduct in the provision of bundled offerings are dealt with competently and expeditiously. To this end, the Commission should make use of the "Rocket Docket" procedures that have lain dormant for the past several years. As an alternative to the "Rocket Docket," the Commission should establish an enforcement process whose principal goal is to adjudicate claims relating solely to BOCs' misconduct in the provision of bundled telecommunications services.

Sage is aware that the Commission has adopted certain measures in the *Non-Accounting Safeguards Order* to expedite the processing of section 271(d)(6) complaints, which, among other things, require that once a complainant has demonstrated a prima facie case that a defendant BOC has ceased to meet the conditions of section 271 entry, the burden of production

will shift to the defendant BOC.[78] Sage is similarly aware that section 271(d)(6) of the Communications Act requires the Commission to act within 90 days on a complaint alleging that a BOC has failed to meet a condition required for in-region, interLATA approval under section 271(d)(3) of the Communications Act.[79] It is, however, unclear whether these processes and measures would continue to apply once the requirements of section 272 are allowed to sunset, since the Commission's authority under section 271(d)(6) appears to be tied to the requirements of section 272.

C. AS A FURTHER PREVENTIVE MEASURE, THE COMMISSION SHOULD ADOPT PERFORMANCE METRICS AND AN ENFORCEABLE PENALTY MECHANISM.

To provide transparency of the BOCs' compliance with its nondiscrimination obligations under the Communications Act, as well as to ensure that illicit conduct is discouraged, the Commission should adopt performance metrics and related enforcement mechanisms. Sage is fully aware that the Commission has released two notices addressing national performance measurements and standards relevant to the provisioning of unbundled network elements and interconnection,[80] and the provisioning of interstate special access service.[81] In this regard, Sage suggests that the Commission consider the Texas performance metrics[82] as a model in establishing its own set of performance standards.

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78 *LEC Classification* Order, at ¶ 118.

79 *See* 47 U.S.C. § 271(d)(6).

80 *Performance Measurements and Standards for Unbundled Network Elements and Interconnection, et al.*, CC Docket No. 01-318, Notice of Proposed Rulemaking, 16 FCC Rcd 21,428 (2001).

81 *Performance Measurements and Standards for Interstate Special Access Services*, CC Docket No. 01-321, Notice of Proposed Rulemaking, 16 FCC Rcd 22,117 (2001).

82 *See Texas Performance Remedy Plan and Performance Measurement, Attachment 17 to Texas 271 Agreement (Version 2.0)* (Aug. 2001).

As an adjunct to the performance metrics that the Commission might ultimately adopt, Sage proposes that the Commission also should develop meaningful and enforceable remedies to deter anticompetitive conduct in connection with the BOCs' provisioning of bundled telecommunications services. To this end, Sage recommends a three-tiered approach that would increase the pressure on BOCs to correct illicit conduct.

In response to a discrimination complaint, the Commission would first mandate a reduction in rates that a BOC charges competitors for interconnection, resale, and unbundled network elements (Penalty Tier 1). If price reductions fail to result in compliance within 60 days, the Commission would next suspend the BOC's section 271 authority, which would preclude a BOC from marketing or accepting new orders for in-region, interLATA service and bundled telecommunications packages which include interexchange service. Such a "freeze" of authority would not affect existing BOC long distance customers (Penalty Tier 2). Finally, if neither of the aforementioned remedies results in compliance within an additional 60 days, the Commission would levy material fines on BOCs on a per-occurrence basis to be paid to the United States Treasury (Penalty Tier 3).

By gradually increasing pressure on the BOCs to remedy their illicit conduct, Sage believes that the impact of BOCs' anticompetitive practices on consumers and on competition itself would be minimized. Accordingly, Sage submits that the Commission should adopt Sage's three-tier proposal.

VI. CONCLUSION

The Commission is fully empowered under the Communications Act to retain the statutory safeguards of section 272 indefinitely. It should do so at this time because the imposition of section 272 requirements on the BOCs have, to some extent, provided the

necessary BOC discipline, although much remains to be done. In considering whether to lift the protections afforded by section 272 of the Act, the Commission should engage in an informed analysis of the BOCs' competitive record. The Commission should consider removing the requirements of section 272 only when it has been fully determined that competitive conditions are such that the protections afforded by section 272 are no longer necessary. In the event the Commission finds that the requirements of section 272 are no longer necessary, as demonstrated by the BOCs' competitive record, the Commission nevertheless should classify the BOCs as dominant in the provision of services bundled with local and in-region, interexchange telecommunications services. For the purpose of determining market dominance, the Commission should narrowly look at bundled telecommunications services offerings as the relevant market. Neither cable telephony, wireless service, nor Internet-based applications are fully substitutable with bundled wireline services at this time. Because the BOCs continue to have market dominance in the provision of wireline telephone exchange and exchange access services, and they continue to use that leverage to the detriment of their competitors, the full panoply of dominant carrier regulations should be applied to them. If the Commission should determine that dominant carrier regulation is not appropriate, it should impose transparency

requirements on the BOCs to ensure that potential anticompetitive conduct is deterred or eliminated. Additionally, to ensure further compliance, the Commission should adopt performance metrics, patterned after the Texas standards, and an enforceable penalty mechanism, such as that proposed by Sage.

Respectfully submitted,

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Dated: June 30, 2003

EXHIBIT A

SBC AMERITECH ILLINOIS TARIFF

5. RATES AND CHARGES

5.1 Monthly Recurring Rates Applicable to "Undesignated Loops" per Sections 13-408 and 13-409 of the Illinois PUA (see Paragraph 1.5.1 above) until May 9, 2005 and to all loops thereafter. (T) | (T) (D)

	Monthly Rate Access Area[1]			
	A	B	C	
A. Analog				
2-Wire Interface Loop				
- Basic	$ 5.12	$12.83	$19.29	(N)/3/
- P.B.X. Ground Start	5.21	14.02	20.49	
- COPTS Coin	5.26	14.46	21.02	
Electronic Key Line (EKL) Interface Loop[2]	5.79	21.35	30.86	
4-Wire Interface Loop	8.03	29.95	43.85	
B. Digital				
2-Wire 160 Kbps [ISDN BRI] Interface Loop[2]	5.38	16.54	28.59	
2-Wire 144 Kbps (IDSL) Interface Loop[2]	5.38	16.54	22.59	
4-Wire 1.544 Mbps Interface Loop[2]	10.03	95.97	91.12	
2-Wire ADSL/HDSL Compatible Interface Loop[2]	5.09	11.24	16.93	
4-Wire HDSL Compatible Interface Loop[2]	8.00	26.71	39.54	(N)/3/

SEE 2ND REVISED SHEET 31, FOLLOWING,
FOR THE CURRENTLY EFFECTIVE TARIFF SHEET

/1/ Access Areas, by exchange, are shown in Part 4, Section 1 of this Tariff.
/2/ For situations where the transmission characteristics cannot be met, distance extension will be provided upon receipt of a Special Request.
/3/ Material now appears on 1st Revised Sheet No. 31.1 in this Section.

Pursuant to Sections 13-408 and 13-409 of the Illinois Public Utilities Act.

5. RATES AND CHARGES

5.1 Monthly Rates

Loops

	Monthly Rate Access Area /1/			
	A	B	C	
A. Analog				
- 2-Wire Interface Loop				
Basic	$2.59	$7.07	$11.40	
P.B.X. Ground Start	2.64	7.84	12.38	
COPTS Coin	2.67	8.09	12.72	
- Electronic Key Line (EKL) Interface Loop /2/	2.95	12.18	17.92	
- 4-Wire Interface Loop	4.08	16.82	26.63	
B. Digital				
- 2-Wire 160 Kbps [ISDN-BRI] Interface Loop /2/	2.71	8.88	13.68	
- 2-Wire 144 Kbps (IDSL) Interface Loop /2/	2.71	8.88	13.68	(N) (N)
- 4-Wire 1.544 Mbps Interface Loop /2/	73.46	61.45	61.56	
- 2-Wire ADSL/HDSL Compatible Interface Loop /2/	2.59	7.07	11.40	
- 4-Wire HDSL Compatible Interface Loop /2/	4.08	16.82	26.63	

/1/ Access Areas, by exchange, are shown in Part 4, Section 1 of this tariff.

/2/ For situations where the transmission characteristics cannot be met, distance extension will be provided upon receipt of a Special Request.

EXHIBIT B

CLOSECALL TESTIMONY (PUBLIC VERSION)

BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

IN THE MATTER OF THE	*	
COMPLAINT OF CLOSECALL	*	
AMERICA, INC. v. VERIZON	*	**CASE NO. 8927**
MARYLAND INC.	*	
	*	

PUBLIC VERSION

OF DIRECT TESTIMONY

OF

Robert W. McCausland

ON BEHALF OF
CLOSECALL AMERICA, INC.

January 31, 2003

Q. PLEASE STATE YOUR NAME AND ADDRESS.

A. My name is Robert W. McCausland. My address is 930 Village Parkway, Coppell, Texas 75019-3194.

Q. PLEASE PROVIDE YOUR CURRENT EMPLOYMENT DETAILS.

A. I am a Telecommunications Consultant. I am currently providing consulting and expert witness services to CloseCall America, Inc. ("CloseCall") in the context of this Proceeding.

Q. DO YOU HAVE ANY RELATIONSHIP WITH CLOSECALL OTHER THAN THAT WHICH YOU DESCRIBED ABOVE? IF SO, PLEASE EXPLAIN.

A. Yes. I am an investor in CloseCall.

Q. WOULD THAT AFFECT YOUR ABILITY TO PERFORM IN THIS CASE OR OTHERWISE DISQUALIFY YOU FROM SUCH PARTICIPATION?

A. Not at all. The analyses and conclusions that I present will be reasoned based on my broad experience and will be supported with facts.

Q. PLEASE DESCRIBE YOUR EXPERIENCE AND QUALIFICATIONS.

A. I have a broad background that includes more than seventeen years' managerial experience in the telecommunications industry, as well as managerial experience in retailing. I have personally negotiated and enforced interconnection provisions and agreements with ILECs, CLECs, CAPs, IXCs and wireless companies in

areas throughout the country. And I have extensive direct experience in areas including state and federal regulation, service costs, marketing and product management. I have testified numerous times before state regulators on matters ranging from BA-NY's 271 application to Allegiance Telecom's applications to provide services in AZ, GA and IL. In numerous instances, I have interfaced directly with customers that have become aggrieved over service difficulties, particularly those associated with cutovers, and have personally seen the resulting competitive impact to CLEC and CAP businesses.

From September, 1997 to February, 2001, I was Vice President – Regulatory and Interconnection for Allegiance Telecom, Inc. and its operating subsidiaries. I was the department head responsible for all aspects of the company's regulatory authority and interconnection agreements. I grew that organization from the start-up stage to a mature organization, devised and filed regulatory proposals such as Allegiance's "Anti-Backsliding" Petition, and oversaw company-wide all national-security-related matters. Additionally, I was an officer on the ALTS Board of Directors for three-years of this period.

From October, 1994 to September, 1997, I held Director and Senior Director positions within MFS Communications Company, Inc., and subsequently WorldCom, Inc. As the MFS collocation expert, I initially managed all domestic physical and virtual collocation arrangements, and participated actively in collocation- and interconnection-related proceedings at the state and federal levels. Eventually, I added unbundled loop implementation to my collocation

responsibilities. Ultimately, following WorldCom's acquisition of MFS, I was responsible for the establishment of inter-company OSS-interface-related processes.

From March, 1984 to October, 1994, I held managerial positions within The C&P Telephone Companies' headquarters organization and subsequently within Bell Atlantic's regional network services staff. At different times, I was product manager for collocation, switched access FGD, special access services and RCC/cellular interconnection. Prior to that, I developed service costs, rate proposals and business case financial inputs as well as state and federal tariff filings.

I am a graduate of Marshall University in Huntington, West Virginia (BBA/1981). I have since taken numerous telecommunications and career-development-related courses, primarily through Bell Communications Research and Bell Atlantic.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to provide, on behalf of CloseCall, expert review and analysis of proprietary case materials and related documents and information and to present reasoned conclusions as they relate to CloseCall's complaint against Verizon Maryland Inc. ("VZ-MD" or "Verizon").

Q. ARE YOU ADEQUATELY CAPABLE AND QUALIFIED TO PERFORM IN SUCH A MANNER?

A. Yes. My qualifications described above closely align with key areas of this case that require such review, analysis and the presentation of reasoned conclusions.

Q. PLEASE PROVIDE AN OVERVIEW OF YOUR APPROACH TO THIS TESTIMONY.

A. In my review of case evidence, it became evident to me that Verizon's strategy is both clever and complex. One part of that strategy tends not to tell the whole story. Rather, separate analyses must often be performed on the piece parts, then those piece parts must be aligned like the pieces of a giant puzzle.

Therefore, I separately identify issues and points raised by CloseCall in its Complaint and will present the associated evidence with specific document cites. Then I will begin to put the pieces of this puzzle together on a subject matter specific basis. And finally, I will put all of the pieces of the puzzle together, to form the broader picture. Along the way I will identify and explain the implications, some of which may not be fully apparent.

Q. PLEASE SUMMARIZE BRIEFLY YOUR KEY FINDINGS AND CONCLUSIONS.

A. Based on the case materials provided to me to date, I will show that, as CloseCall has alleged, VZ-MD has, on a knowing and calculated basis, refused to make its

voice messaging (*i.e.*, voice mail) products non-discriminatorily available for resale in order to help it keep its dominant position in the Maryland telecommunications marketplace. I will show that Verizon is, as CloseCall stated in its Complaint, anti-competitively "tying" together its regulated local telephone service and "unregulated" voice mail products. Further, I will demonstrate how Verizon's refusal to sell its voice mail products to CloseCall's local service customers on a stand-alone basis (*i.e.*, independently of Verizon's local telephone service) and Verizon's refusal to allow CloseCall to resell Verizon's voice mail products are integral to Verizon's anti-competitive strategy. I will demonstrate that Verizon has created an exception to its local service/voice mail tying strategy wherein at least one "bounty-hunter" CLEC is permitted to resell Verizon-branded voice mail services and rewarded with additional resale discounts in return for assisting Verizon's local customer "winback" effort. I will also show that Verizon employs for this purpose "secret" CLEC resale agreement amendments which it does not make available to all CLECs or provide to the Commission for approval, in violation of Section 252(e) of the Telecommunications Act. These agreements are integral to Verizon's anti-competitive strategy.

I will show why CloseCall's estimate of damages caused by Verizon's actions is almost certainly understated since CloseCall does not even know of some of Verizon's anti-competitive "stealth" tactics, tactics that are used to entice away existing customers of CloseCall and return them to Verizon via at least one

bounty-hunter CLEC partner. I will demonstrate how Verizon, in conjunction with such a CLEC partner that Verizon has screened and selected, uses an approach that combines a "bounty-hunter" winback strategy with the additional leverage that Verizon achieves by limiting the availability of its voice mail resale to such a bounty-hunter CLEC partner. I will reveal how Verizon has cleverly masked its combined voice mail resale/bounty-hunter winback strategy beneath a number of separate, yet inter-operational agreements with one such CLEC. I will show that Verizon management did this while recognizing the competitive leverage that voice mail provides to Verizon and the harm that a Verizon restriction on the re-sale of voice mail causes to the local resale market. I will cite the substantial additional discounts, *e.g.*, winback incentives – essentially "bounties," that Verizon provides to at least one of its bounty-hunter CLEC partners for bringing customers back to Verizon; discounts that can reach levels far greater than those provided through the Commission-approved resale discount and therefore far greater than the resale discount afforded to CloseCall.

I will draw the parallels and cite the evidence that show a similar anti-competitive pattern in Verizon's DSL strategies and behavior. I will further show, based on Verizon's own documents, the merits of CloseCall's contention that, without Commission action to eliminate such anti-competitive practices and actions of Verizon, "Verizon will expand its exclusionary practices to additional services" and the public interest will suffer further.

In light of these and other important revelations that I address in this testimony, I have concluded that it is not even a stretch to say that Verizon has engaged in a carefully-devised scheme to, as CloseCall Witness Mazerski says, "orchestrate" the local telephone market in Maryland and that Maryland's local services market is desperate for the Commission to take the kinds of decisive actions that CloseCall has sought. In fact, I strongly believe that the evidence addressed here is so scandalous and compelling that the Commission should take actions beyond those sought by CloseCall, up to and including the establishment of a "monitor" of Verizon within the Commission and the formal withdrawal and withholding of any support for Verizon's application to provide interLATA long distance under Section 271 of the Telecommunications Act until such time that there is no doubt of Verizon's compliance.

Q. HAVE YOU READ AND DO YOU UNDERSTAND THE COMPLAINT OF CLOSECALL, AS WELL AS THE DIRECT AND SURREBUTTAL TESTIMONY OF THOMAS E. MAZERSKI?

A. Yes.

Q. HAVE YOU READ, REVIEWED AND ANALYZED OTHER MATERIALS PERTAINING OR POSSIBLY RELATING TO THIS CASE? IF SO, PLEASE IDENTIFY SUCH MATERIALS BY BROAD CATEGORY.

A. Yes. I have read documents pertaining to this case that are listed or posted on the Commission's website. Also, I have read or reviewed portions of the

Telecommunications Act of 1996 and information regarding various regulatory rulings and decisions. In addition, I have read, reviewed and analyzed Verizon documents produced under proprietary cover and forwarded to me by CloseCall's counsel pursuant to the Agreement Governing the Production of Proprietary Information ("VZ Proprietary Docs.").

Q. HAVING READ, REVIEWED AND ANALYZED VZ PROPRIETARY DOCS., CAN YOU STATE THAT CLOSECALL'S COMPLAINT THAT "VERIZON RESTRICTS ACCESS TO ITS VOICE MESSAGING PRODUCTS TO DISCOURAGE CUSTOMERS FROM SEEKING COMPETITIVE SERVICES" IS CORRECT? IF SO, PLEASE SUPPORT YOUR ANSWER.

A. Yes. CloseCall is definitely correct. VZ Proprietary Docs. contain ample evidence proving that VZ-MD is doing just that.

For example, within Verizon's Home Voice Mail ("HVM") "Messaging Services Strategy" documents (VZCC 102 100069 and VZCC 103 100025 – **Exhibit 1**), Verizon states **[BEGIN PROPRIETARY]**

[END PROPRIETARY]. Several pages later, under the page heading **[BEGIN PROPRIETARY]**

[END PROPRIETARY]. Verizon further identifies HVM as an **[BEGIN**

PROPRIETARY]

[END PROPRIETARY].

Aligning these few pieces of the puzzle shows that Verizon's strategy to "tie-in to local loop" its Home Voice Mail product was done because Home Voice Mail is "key" to Verizon in retaining and winning back local service customers. The record in this case already makes clear that Verizon refuses to sell (*i.e.*, "restricts access to") its Home Voice Mail product to CloseCall's customers, either directly or through resale, even though such customers are served through Verizon's local-service resale.

So the bottom line here is that CloseCall is correct – Verizon is restricting access to its voice messaging products to discourage customers from seeking competitive services.

Q. CLOSECALL WITNESS MAZERSKI STATES THROUGHOUT HIS DIRECT AND SURREBUTTAL TESTIMONY THAT VERIZON IS USING A STRATEGY OF "TYING" ITS REGULATED LOCAL SERVICE TO ITS "UNREGULATED" VOICE MAIL SERVICES IN ORDER TO BLOCK CLOSECALL'S ABILITY TO COMPETE FOR LOCAL SERVICE CUSTOMERS IN MARYLAND. IS THE "TYING" THAT MR. MAZERSKI CITES THE SAME AS THE "TIE-IN TO THE LOCAL LOOP" STRATEGY CITED IN THE PRECEDING ANSWER?

A. Yes. In fact, Mr. Mazerski has used both the term "tying" and the term "tie-in" in the same context within his Direct and Surrebuttal Testimony.

Q. DO YOU AGREE WITH CLOSECALL WITNESS MAZERSKI THAT THE EFFECT OF SUCH "TYING" BY VERIZON IS "COMPETITIVE HARM?"

A. Yes. As one example, Mr. Mazerski states in his Direct Testimony that CloseCall has tracked the customers which have cancelled their orders to purchase CloseCall's local services due to Verizon's strategy of "tying" its voice mail services to its own local services – approximately 1,300 new customers cancelled CloseCall orders as of August, 2002.

Without the corrective actions that CloseCall is seeking, the magnitude of this competitive harm can only increase due to VZ-MD's continuing local-service market dominance and the significant growth that VZ-MD is achieving in its consumer voice mail penetration in Maryland. Specifically, this VZ-MD

penetration rate grew to **[BEGIN PROPRIETARY]**

END PROPRIETARY]. Combined with VZ-MD's still overwhelming 94 percent share of Maryland end-user switched access lines (per the December 9, 2002 FCC report on the status of local competition citing June 2002 data), this tying of voice mail and local services presents a recipe for disaster for Maryland's consumers and VZ-MD's local-service competitors.

Q. DO YOU HAVE ANY REASON TO BELIEVE THAT THE NUMBER OF CLOSECALL CUSTOMERS THAT MR. MAZERSKI CITED AS LOST DUE TO VERIZON'S ANTI-COMPETITIVE BUSINESS STRATEGIES IS INCOMPLETE? IF SO, PLEASE EXPLAIN.

A. Yes, I strongly suspect that CloseCall has understated the competitive harm that it has incurred because CloseCall is clearly not aware of other anti-competitive strategies employed by Verizon, including the strategies employed by Verizon through its "secret" agreement with Lightyear and through any other such agreements that have not yet been revealed by Verizon in this case.

Q. WHY DO YOU STATE THAT "CLOSECALL IS CLEARLY NOT AWARE" OF OTHER ANTI-COMPETITIVE STRATEGIES EMPLOYED BY VERIZON?

A. I state that CloseCall is clearly not aware of other anti-competitive strategies employed by Verizon through, for example, its "secret" agreement with Lightyear (and any other such agreements) for a number of reasons.

First, at least one of Verizon's four agreements with Lightyear (*i.e.*, "UniDial") is, as CloseCall states, "secret" (*i.e.*, not filed with the Commission, not made available voluntarily, not publicly available and specifically stipulated as such). This clearly-secret agreement is identified as a **[BEGIN PROPRIETARY]** **[END PROPRIETARY]**.

Second, even the other three agreements that Verizon has with Lightyear were not provided outside of VZ Proprietary Docs. and the proprietary protections afforded to such materials.

Third, once I received and reviewed VZ Proprietary Docs., it was only after substantial study and scrutiny that the even more significant anti-competitive implications became evident. In other words, the anti-competitive "stealth" tactics employed by Verizon in its agreements with Lightyear have been effective.

Fourth, CloseCall did not address in Mr. Mazerski's testimony any competitive impact resulting from a combined voice mail resale/bounty-hunter winback

strategy, which is the strategy employed by Verizon and its bounty-hunter CLEC partner Lightyear and possibly by Verizon with other bounty-hunter CLEC partners. It is not plausible that CloseCall would know of such an anti-competitive strategy and not raise the specific issue in its Complaint, particularly since CloseCall's existing customers are targets of this clandestine Verizon strategy and since at least this bounty-hunter CLEC partner of Verizon receives discounts far greater than those afforded to CloseCall, that is, discounts for each customer "winback" that it (Lightyear) achieves for Verizon beyond the Commission-approved resale discount available to CloseCall.

Q. WHAT DO YOU MEAN WHEN YOU REFER TO A "BOUNTY-HUNTER" WINBACK STRATEGY? PLEASE EXPLAIN THIS TERM AND OTHER ASSOCIATED OR UNCONVENTIONAL TERMS IN THE CONTEXT OF VERIZON'S AGREEMENT WITH LIGHTYEAR AS WELL AS WHY YOU USE SUCH TERMS.

A. I sometimes use analogies and unconventional terms to help explain complex, convoluted, clandestine or deceptive strategies and practices.

In the most simplistic form, a bounty hunter is one that tracks down and captures for a reward. The reward, or "bounty," is a payment provided for each such action.

Verizon, through its four inter-operational agreements with Lightyear (a company formerly known as "UniDial"), offers a reward ("bounty") in the form of what it

calls its "Winback Discount." In its "Amendment to Resale Agreements" with Lightyear (what I will refer to as "Amendment 1"), Verizon states that its Winback Discount is **[BEGIN PROPRIETARY]**

[END PROPRIETARY]. The best way for me to describe how these three discounts are applied by Verizon is to quote from its Amendment 1: **[BEGIN PROPRIETARY]**

[END PROPRIETARY]. Amendment 1 contains a myriad of limitations, terms and restrictions covering when and how these three additional discounts are to be applied, but the fact remains that Lightyear is, in effect, Verizon's bounty-hunter CLEC partner who receives a financial incentive from Verizon to track down and capture what Verizon evidently thinks of as renegade customers that have strayed from its ranch.

But Verizon's bounty-hunter CLEC strategy is just one piece of this giant puzzle. As anti-competitive of a tactic that this bounty-hunter CLEC strategy is for the dominant provider having substantial market power, it's not the only force at work. In other words, Verizon's bounty-hunter CLEC strategy is not an isolated, stand-alone approach. Rather, Verizon has combined the bounty-hunter CLEC

strategy with its anti-competitive and discriminatory strategy of voice mail resale restriction. Specifically, through its separate but inter-operational agreement with Lightyear (*i.e.*, **[BEGIN PROPRIETARY]**

[END PROPRIETARY] Verizon has provided its bounty-hunter CLEC partner with sales leverage through Verizon voice mail resale. Obviously, based on CloseCall's Complaint and CloseCall Witness Mazerski's Direct and Surrebuttal Testimony, Verizon refuses to provide voice mail resale to CloseCall. Yet Verizon allows its bounty-hunter CLEC partner Lightyear to resell Verizon's voice mail products.

It can be no coincidence that Verizon provides to a competitor, to which it provides "winback" discounts not provided to other competitors in the same markets, Verizon's voice mail products to use as a tool in achieving such winbacks. It's like a bounty-hunter's dream – Verizon supplies to its bounty-hunter CLEC partner the bait (voice mail resale that is not available to CloseCall) and Verizon supplies to that same bounty-hunter CLEC partner the re-capture incentive (winback discounts combined with other discounts and in addition to the standard resale discount).

Q. PLEASE EXPLAIN WHAT YOU MEAN BY THE TERM "INTER-OPERATIONAL."

A. Inter-operational in the context of Verizon's four agreements with Lightyear simply means that the offerings contained within one of the Verizon/Lightyear agreements are usable in conjunction with the offerings made available by Verizon in another of the Verizon/Lightyear agreements. The most significant example involves Lightyear's ability to use voice mail resale from the "secret" agreement to entice away other CLECs' customers together with the financial incentive and motivation (*i.e.*, the winback discounts) that Verizon provides to Lightyear within Amendment 1.

Q. WHAT ARE THE BENEFITS TO VERIZON OF HAVING SEPARATE YET INTER-OPERATIONAL AGREEMENTS WITH A BOUNTY-HUNTER CLEC PARTNER?

A. Clearly one benefit to Verizon of having separate yet inter-operational agreements with a bounty-hunter CLEC partner such as Lightyear is that such an approach creates "stealth." In other words, such an approach helps make "invisible" or at least less apparent anti-competitive behavior, or other potential or existing conflicts or violations and can subsequently frustrate and confuse those who would be harmed or those who, like CloseCall, are being harmed. Such an approach would also frustrate efforts by those who are responsible to oversee, regulate or enforce laws.

In this case, it is apparent that Verizon had previously filed with the Commission its original agreement with Lightyear (UniDial) as well as Amendment 1 and another amendment entitled "Amendment No. 2 to Resale Agreements." However, it is also apparent that Verizon did not file its "secret" agreement entitled "Marketing and Servicing Agreement" which allows Lightyear to resell Verizon's voice mail products. In fact, Verizon continued to refuse to reveal its "secret" agreement until the Commission forced it to do so, and then Verizon only provided it (and the other three agreements) under proprietary cover. Until now, in this case, the inter-operational nature of the separate agreements has provided to Verizon and its bounty-hunter CLEC partner(s) the practical effect of one agreement without drawing the attention needed to allow for regulatory scrutiny. If it were not for CloseCall's Complaint, the stealth would have been preserved but the harm would have continued to be seen without opportunity for remedy.

Q. WHY HAVE YOU REPEATEDLY SUGGESTED THAT VERIZON LIKELY HAS BOUNTY-HUNTER CLEC PARTNERS IN ADDITION TO LIGHTYEAR?

A. Through VZ Proprietary Docs., I have been able to infer that Verizon has screened and selected other such bounty-hunter CLEC partners. In addition, CloseCall Witness Mazerski had stated in his Surrebuttal Testimony that "CloseCall has learned, in the course of discussions with Verizon employees, that 'preferred' agreements exist with other CLECs, such as CTC Communications and USN." Further, in an article entitled "Sweetening the deal: Bell Atlantic

offers CTC deeper discounts" (*Telephony*, July 12, 1999 – **Exhibit 7**), Peter Karoczkai, Bell Atlantic's vice president of marketing and product management, stated that Bell Atlantic had provided CTC Communications "a deeper discount than if they would sell from a month-to-month tariff," and further stated that Bell Atlantic had previously struck a similar deal with UniDial (now known as Lightyear) and that Bell Atlantic was negotiating similar deals with several other carriers.

Given Verizon's record of withholding the Lightyear agreements until the Commission forced disclosure, it cannot be surprising that Verizon has not voluntarily revealed and provided the other similar agreements.

Q. IN LIGHT OF THIS CLEAR CASE OF ANTI-COMPETITIVE ACTIVITY AND ABUSE, SHOULD THE COMMISSION REQUIRE VERIZON TO FILE AND MAKE AVAILABLE FOR PUBLIC SCRUTINY ALL INTERCONNECTION AGREEMENTS, INCLUDING THOSE WHICH MAY BE SEPARATE BUT INTER-OPERATIONAL?

A. Yes, definitely. I am not a lawyer, however, I am familiar with Section 252(e) of the Telecommunications Act which provides for the submission to a State Commission of interconnection agreements. That Section provides "grounds for rejection" of an interconnection agreement by a State Commission that include: a) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or b) the implementation of such agreement

or portion is not consistent with the public interest. Verizon's clever masking of its combined voice mail resale/bounty-hunter winback strategy beneath a number of separate, yet inter-operational agreements clearly fails both of these tests and provides substantial evidence of the need for thorough Commission review of all Verizon interconnection agreements and inter-operational agreements. Verizon has demonstrated here that it cannot be trusted to meet its obligations on its own.

Q. IN ADDITION TO FORCING VERIZON TO FILE AND MAKE AVAILABLE FOR PUBLIC SCRUTINY ALL INTERCONNECTION AGREEMENTS, INCLUDING THOSE WHICH MAY BE SEPARATE BUT INTER-OPERATIONAL, SHOULD THE COMMISSION ALSO FORCE VERIZON TO ALLOW ALL OTHER PROVIDERS TO "OPT IN" TO ALL SUCH AGREEMENTS?

A. Yes, so long as the Commission has concluded, through due process, that the agreement(s) should not be rejected and prohibited from use. This would not be without precedent. As the result of a Minnesota Complaint involving "secret" agreements between Qwest Communications and several of Qwest's competitors (at Docket No. P-421/C-02-197 – **Exhibit 8**), Qwest agreed to allow the state's other competitors to opt in to those previously-secret agreements. The Minnesota PUC has indicated that Qwest's punishment should also include a fine. A decision on that case is expected as early as next month.

Q. DO YOU AGREE WITH CLOSECALL WITNESS MAZERSKI WHO, IN HIS SURREBUTTAL TESTIMONY, STATES THAT "VERIZON'S BUSINESS STRATEGY IS TO MAXIMIZE ITS MARKET SHARE BY THROWING UP ARBITRARY BARRIERS BEFORE ITS COMPETITORS"? IF SO, PLEASE EXPLAIN WHY.

A. Yes, I agree with Mr. Mazerski that Verizon has employed a business strategy of maximizing its market share by creating arbitrary barriers for its competitors. This is demonstrated not just by Verizon's tying practices and strategies, voice-mail-related cutover difficulties and other operational difficulties generated by Verizon's practices (as documented in CloseCall's Complaint and in Mr. Mazerski's Direct and Surrebuttal Testimony), and Verizon's refusal to allow the customers of most of its competitors to have access to its voice mail and DSL products, but is also demonstrated by Verizon's creation, use and concealing of its combined voice mail resale/bounty-hunter winback strategy.

Q. DO YOU SEE MERIT IN CLOSECALL WITNESS MAZERSKI'S CONTENTION THAT, WITHOUT COMMISSION ACTION TO ELIMINATE THE ANTI-COMPETITIVE PRACTICES AND ACTIONS OF VERIZON, "VERIZON WILL EXPAND ITS EXCLUSIONARY PRACTICES TO ADDITIONAL SERVICES" AND THE PUBLIC INTEREST WILL SUFFER FURTHER? IF SO, PLEASE EXPLAIN.

A. Definitely. Evidence of such behavior is already present.

For example, within Verizon's Messaging Services Strategy documents **[BEGIN PROPRIETARY]**

[END PROPRIETARY]. In other words, the fBA (Verizon terminology for "former BA companies") strategies of not reselling voice mail products will be expanded to all fGTE (*i.e.*, "former GTE companies"). Restated, Verizon is seeking to expand its most anti-competitive strategies to its other serving areas.

Another example can be found within Verizon's "Affiliate Bundle Launch Plan" documents **[BEGIN PROPRIETARY]**

[END PROPRIETARY]. Reasons that Verizon cites for the aggressive nationwide expansion of its strategy of tying local service to its other services include: **[BEGIN PROPRIETARY]**

[END PROPRIETARY]. Restated here like restated in the above voice mail example, Verizon is seeking to expand its most anti-competitive strategies to its other serving areas and is simultaneously expanding its local-

service tying practice to additional Verizon services. Such evidence clearly shows the merits of CloseCall's contention.

Q. HAS VERIZON ASSESSED THE COMPETITIVE IMPACT OF ITS STRATEGY OF TYING VERIZON LOCAL SERVICE TO ITS DSL AND WIRELESS SERVICES OR HAS VERIZON IDENTIFIED FOR ITSELF A MONETARY INCENTIVE TO FULFILL THAT STRATEGY? IF SO, PLEASE PROVIDE DETAILS.

A. Yes, Verizon has done both. Verizon management states **[BEGIN PROPRIETARY]**

[END PROPRIETARY].

Q. HAS VERIZON CITED ITS PRICING APPROACH FOR ANY OF THE PRODUCTS THAT IT IS INCLUDING WITHIN ITS TYING STRATEGY? IF SO, PLEASE PROVIDE DETAILS.

A. Yes, Verizon has stated that **[BEGIN PROPRIETARY]**

[END PROPRIETARY].

Q. DO STRATEGIES OF VERIZON SUCH AS THOSE REGARDING ITS DISCOUNTING TO **[BEGIN/END PROPRIETARY]** AND THOSE ASSOCIATED WITH ITS PRODUCT TYING IN ORDER TO PROVIDE **[BEGIN/END PROPRIETARY]** NEGATIVELY IMPACT THE PUBLIC INTEREST AND CLOSECALL?

A. Yes, in a big way. As CloseCall had stated, such anti-competitive strategies discourage consumers from subscribing to competitive local services, bar consumers from obtaining the benefits of local exchange competition and chill competitive entry in the local service market. Driving market share is not the same as competing for market share – a grocery store cannot drive market share but an unchecked monopoly provider engaged in a tying strategy can. These and other Verizon strategies documented in this Proceeding are central to CloseCall's Complaint. Verizon management has shown, through its own documentation and statements, that CloseCall is correct.

Q. DOES VERIZON'S AFFILIATE BUNDLING STRATEGY, AS REVEALED IN THIS PROCEEDING, HIGHLIGHT THE LEGITIMACY OF THE CONCERNS THAT THIS COMMISSION CITED IN SECTION 11. B. OF ITS DECEMBER 16, 2002 LETTER IN CASE NO. 8921?

A. Absolutely. Evidence within VZ Proprietary Docs. clearly shows that the Commission's concerns regarding Verizon's interactions with its affiliates are real and that, without Commission scrutiny, Verizon's affiliate-related behavior threatens CloseCall and other competitors.

Q. IS THERE EVIDENCE THAT VERIZON IS EMPLOYING A DSL PARTNERING OR RESALE STRATEGY WITH COMPETITORS OF CLOSECALL?

A. Yes. VZ Proprietary Docs. regarding DSL sales and marketing **[BEGIN PROPRIETARY]**

[END PROPRIETARY].

Q. IN LIGHT OF YOUR EXAMINATION AND ANALYSIS OF VZ PROPRIETARY DOCS. AND OTHER RELATED CASE MATERIALS AND INFORMATION, WHAT COMMISSION ACTIONS DO YOU FEEL SHOULD BE CONSIDERED?

A. In light of the results of my examination and analysis of VZ Proprietary Docs. and other related case materials and information, and in light of the record now developed in this case, a record showing substantial and multiple anti-competitive abuses and harm caused by VZ-MD, the vastly-dominant provider of telecommunications services and telecommunications-related services in Maryland, and further in light of the significant public-interest factors cited in CloseCall's Complaint, within CloseCall Witness Mazerski's Direct and Surrebuttal Testimony in this case, and within my own Testimony in this case, I state respectfully that there is a need for the Commission to consider taking the following actions:

1) direct Verizon to provide non-discriminatory wholesale access to voice messaging and line-sharing DSL services in the manner proposed by CloseCall and, for DSL, in a manner consistent with the Commission's December 16, 2002 conditional approval of Verizon's Section 271 application,

2) direct Verizon to, in the manner proposed by CloseCall, end its practice of abruptly disconnecting the voice messaging and line-sharing DSL services subscribed to by customers that have selected CloseCall as their local service provider,

3) require Verizon to make public all of its agreements with competitors,

4) immediately end all bounty-hunter winback mechanisms that Verizon has put in place with CLEC partners such as Lightyear,

5) direct Verizon to, in the manner proposed by CloseCall, end its discriminatory policy of refusing to provide voice messaging and line-sharing DSL services to CloseCall's local service customers (and, importantly, require Verizon to immediately replace all discriminatory voice mail resale and DSL resale agreements that Verizon has entered into, whether on a combined basis with the bounty-hunter winback mechanisms or separate, with agreements that are clear of anti-competitive mechanisms and that are available to all competitors on a non-discriminatory basis),

6) require Verizon to make up the damages that it has inflicted on CloseCall,

7) impose on Verizon a meaningfully-significant fine,

8) establish a "monitor" of Verizon within the Commission,

9) formally withdraw and withhold any support for Verizon's application to provide interLATA long distance under Section 271 of the Telecommunications Act until such time that there is no doubt of Verizon's compliance in areas revealed in this Proceeding to be non-compliant or highly problematic, and

10) take any other actions that the Commission deems necessary to eliminate the current problems in the competitive environment in Maryland, a competitive environment that Verizon has deftly "slanted" to its benefit.

Q. WHY DO YOU SUGGEST THAT THE COMMISSION SHOULD CONSIDER GOING BEYOND CLOSECALL'S REQUEST AND POSSIBLY TAKE SUCH ACTIONS AS "ESTABLISH A 'MONITOR' OF VERIZON WITHIN THE COMMISSION" AND "WITHDRAW AND WITHHOLD" ANY SUPPORT FOR VERIZON'S APPLICATION TO PROVIDE INTERLATA LONG DISTANCE SERVICE?

A. As I stated earlier in this Testimony, it is clear that CloseCall is not aware of certain of Verizon's key anti-competitive tactics, tactics such as the combined voice mail resale/bounty-hunter winback strategy employed by Verizon to "entice" away existing customers of CloseCall and return them to Verizon via at least one, and probably more than one, bounty-hunter CLEC partner. Nor would CloseCall be able to attribute customer losses to such clandestine tactics of Verizon. Verizon refused to reveal such tactics voluntarily and ultimately did so

only after the Commission required it to produce certain documents, some of which Verizon has yet to provide. The anti-competitive tactics of Verizon that were subsequently revealed were done so under proprietary cover as part of VZ Proprietary Docs. in this case. There is no one at CloseCall who has access to VZ Proprietary Docs. or information about what is within VZ Proprietary Docs. Therefore, CloseCall could not have known, and still does not know, the magnitude of Verizon's anti-competitive behavior. Had CloseCall known, it would likely have sought much more aggressive action by the Commission. If other competitors of VZ-MD (other than Lightyear and any other Verizon bounty-hunter CLEC partner) had known, there would likely have been a firestorm of protest and a vocal effort to get much more aggressive penalties and remedies through formal Commission action. And public-interest groups likely would have spoken up and sought additional action by the Commission. But the "stealth" nature of Verizon's anti-competitive strategy successfully prevented all of that. And the disappointing state of competition in Maryland, as reflected in the FCC tracking data, is a result.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

CERTIFICATE OF SERVICE

I, Theresa A. Baum, hereby certify that copies of the foregoing Comments of Sage Telecom, Inc., in WC Docket No. 02-112 were served via hand delivery, this 30th day of June 2003 upon the following:

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